

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK

MARSHALL BROADCASTING GROUP, INC.

Plaintiff(s),

-against-

NEXSTAR BROADCASTING, INC.

Defendant(s).

Index No.

Summons

Date Index No. Purchased: April 3, 2019

To the above named Defendant(s)

NEXSTAR BROADCASTING, INC.
545 E. John Carpenter Freeway, Suite 700
Irving, TX 75062

You are hereby summoned to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after the service is complete if this summons is not personally delivered to you within the State of New York); and in case of your failure to appear or answer, judgment will be taken against you by default for the relief demanded in the complaint.

The basis of venue is Defendant's affirmative submission to venue in New York County which is found in Defendant's Guarantee of Plaintiff's payment of lenders to the credit facility used to purchase Plaintiff's TV stations

Dated: Armonk, New York

April 3, 2019

Boies Schiller Flexner LLP

by /s/ DAVID BOIES

David Boies

Attorneys for Plaintiff

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**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NEW YORK**

MARSHALL BROADCASTING GROUP, INC.,

Plaintiff,

v.

NEXSTAR BROADCASTING, INC.,

Defendant.

Case No. _____

Jury Trial Demanded

COMPLAINT

Plaintiff Marshall Broadcasting Group (“MBG”) alleges the following based upon personal knowledge as to itself and its own acts and upon information and belief as to all other matters. Plaintiff’s information and belief is based on, among other things, the independent investigation of its undersigned counsel.

1. Plaintiff MBG is a small, minority-owned company, which owns and operates three television stations that it bought from Defendant Nexstar Broadcasting, Inc. (“Nexstar”), a subsidiary of the second largest operator of television stations in the United States. Nexstar never wanted to sell those stations, but under Federal Communications Commission (“FCC” or the “Commission”) rules Nexstar was required to do so in order to obtain approval of its acquisition of various other television stations. Nexstar chose MBG as the buyer because Nexstar knew that the FCC would look favorably on a sale to a minority-owned entity as it would further the FCC’s longstanding objective of increasing ethnic diversity in ownership of commercial television stations.

2. Nexstar never intended the transaction to be a permanent divestiture. Rather, it hoped that it would be able to reacquire the stations that it had parked with MBG if FCC regulations were subsequently modified or relaxed. To ensure that it would be in position to do so, Nexstar conceived and executed a scheme to hobble the operations of MBG and those three television stations so that Nexstar would be able to acquire the stations cheaply, either in a bankruptcy sale or from an MBG that would have no choice but to sell at a fire sale price.

3. MBG has suffered substantial harm as a result of Nexstar's scheme and the actions that Nexstar and its agents took in furtherance of it.

THE PARTIES

4. Plaintiff MBG is a corporation organized under the laws of Texas. MBG is a minority-owned business that owns three television stations: KPEJ-TV in Odessa, Texas ("KPEJ"); KMSS-TV in Shreveport, Louisiana ("KMSS"); and KLJB in Davenport, Iowa ("KLJB").

5. Defendant Nexstar is a corporation organized under the laws of Delaware. Its principal place of business is in Irving, Texas. Nexstar is a subsidiary of a publicly traded company, Nexstar Media Group, Inc., which directly or indirectly operates 174 television stations across the United States. This enables Nexstar Media Group to reach almost 39 percent of all U.S. television-viewing household and report a total net revenue for 2018 of more than \$2.7 billion.

JURISDICTION AND VENUE

6. This Court enjoys personal jurisdiction over Nexstar because Nexstar affirmatively submitted to this Court's jurisdiction in any actions arising out of or relating to

Nexstar's agreements to guarantee MBG's repayment of the credit facilities provided by lenders to fund MBG's purchase of its television stations (the "Guarantee Agreements").

7. Venue is proper in New York County pursuant to CPLR § 501 because Nexstar affirmatively submitted to venue in New York County in any actions arising out of or relating to the Guarantee Agreements.

FACTUAL ALLEGATIONS

A. History Of Minority Ownership Of Media Outlets In The United States.

8. At the heart of the United States' republican system of government lies the ability of those with disparate points of view to communicate their ideas to the public. Through a vibrant marketplace of ideas, the American people are able to debate the issues of the day and find the best solutions to the problems facing them.

9. Like any other marketplace, however, the system surrounding public debate operates in an efficient manner only to the extent that barriers of entry do not operate to exclude points of view.

10. Far from mere political theory, the FCC is charged with regulating the public airwaves that serve as the backbone of the American communications system. Despite the FCC's mission to make the national communications system available "to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex, a rapid, efficient, Nation-wide, and world-wide," 47 U.S.C. § 151, the American broadcast industry suffers from an historic dearth of minority owners. Indeed, despite the FCC's stated policy of maintaining diversity of viewpoints in local media markets, racial minorities have been shut out of the ranks of broadcast media ownership and, consequently, the viewpoints of racial minorities have been shut out of the media.

11. By 1978, the FCC in its “Statement of Policy on Minority Ownership of Broadcast Facilities” was “compelled to observe that the views of racial minorities continue to be inadequately represented in the broadcast media. This situation is detrimental not only to the minority audience but to all of the viewing and listening public. Adequate representation of minority viewpoints in programming serves not only the needs and interests of the minority community but also enriches and educates the non-minority audience. It enhances the diversified programming which is a key objective not only of the Communications Act of 1934 but also the First Amendment.”

12. To combat the lack of minority ownership in the broadcast media, the FCC’s 1978 Statement announced that, “where a sale [of broadcast licenses] is proposed to parties with a significant minority interest,” the Commission would grant tax certificates to those who assigned or transferred the broadcast licenses.¹ Additionally, the FCC allowed certain broadcasters “to transfer or assign their licenses at a ‘distress sale’ price to applicants with a significant minority ownership interest.”

13. Since 1978, the FCC has continued to adopt policies and enact programs to promote minority ownership within the broadcast media. Despite its efforts, the FCC’s goal of increasing minority ownership within the broadcast industry proves elusive. According to an FCC “snapshot report,” as of April 15, 2014, only 0.7 percent of major television broadcast stations were controlled by black or African-American owners; only 0.9 percent by American Indian or Alaska Native owners; 0.4 percent by Asian-American owners; 0.1 percent by Native Hawaiian or Pacific Islander owners; and only 2.9 percent by Hispanic or Latino owners. As the FCC has recognized, despite the variety of policies enacted and actions taken by the

¹ Congress repealed the FCC’s tax certificate program in 1995.

Commission, the anemic rate of minority ownership in the broadcast industry can largely be attributed to “the lack of financing available to capitalize minority broadcast ventures.”

Commission Policy Regarding the Advancement of Minority Ownership in Broadcasting, 50 FR 1239-01 at 1241 (1985).

B. Nexstar Attempts To Expand Its Television Business.

14. In 2013, Nexstar sought to expand its ownership of television stations throughout the United States. Through a series of transactions, it entered into agreements to acquire stations from Communications Corporation of America (“CCA”), White Knight Broadcasting (“White Knight”), and Grant Broadcasting (“Grant”).

15. Included in these stations are the three stations now owned by MBG: KPEJ, KMSS, and KLJB.

16. Nexstar did not wish to sell these stations to MBG.

17. But because of rules promulgated by the FCC that limit the number of stations any one entity can own in a single market and the percentage of America any one broadcaster can reach, Nexstar was required to divest some of the stations it owned.

18. Nexstar initially tried to bring its transaction into compliance by selling KPEJ and KMSS to Mission Broadcasting, Inc. (“Mission”). In this transaction, Mission would have paid \$27 million to Nexstar for both stations and then entered into a Shared Services Agreement (“SSA”)² and Joint Sales Agreement (“JSA”)³ that collectively would have allowed Nexstar to manage most, if not all, of the stations’ day-to-day operations as well as sell all of the

² SSAs are agreements that allow one television broadcaster to provide station-related services—including back-office services—to one or more other television broadcasters.

³ JSAs are agreements with a television broadcaster that authorizes a broker to sell some or all of the advertising time for the television broadcaster in return for a fee or percentage of revenues paid to the television broadcaster.

commercial advertising time on the stations. Subject to FCC approval, Nexstar and Mission entered into a set of agreements for these transactions, including asset purchase documents as well as the SSA and JSA.

19. Similarly, Nexstar tried to sell KLJB to Mission. In that transaction, Mission was to pay Nexstar \$15.3 million for the station and then, like the transactions envisioned for KPEJ and KMSS, enter into a JSA and SSA that effectively gave Nexstar control over the station. And as they had for the KPEJ and KMSS transactions, Nexstar and Mission prepared a set of agreements for this transaction, subject to FCC approval.

20. The practical reality of both proposed transactions was that, after the sale, Nexstar would run the three stations as if they were owned and operated by Nexstar.

C. The FCC Rejects Nexstar's Attempt To Circumvent FCC Rules.

21. Nexstar's arrangement with Mission, while not unprecedented, was of a type that the FCC was assessing to determine whether they should be permissible. It decided that such arrangements should not be permitted. For JSAs like those proposed between Nexstar and Mission, the FCC found that "JSAs encompassing a substantial portion of the brokered station's advertising time create the potential to influence the brokered station and provide incentives for joint operation that are similar to those created by common ownership." *In re 2014 Quadrennial Regulatory Review*, 29 FCC Rcd 4371 ¶ 359 (2014), *reversed by Prometheus Radio Project v. FCC*, 824 F.3d 33, 58-60 (3d Cir. 2016). Accordingly, the Commission approved new rules involving "television JSAs that permit the sale of more than 15 percent of the advertising time per week of the brokered station[.]" *Id.*

22. These rules stated that if a JSA provided a station the ability to sell more than 15 percent of another station's advertising time, the first station would have an "attributable interest" in the latter. Such an interest would mean that, for purposes of determining whether the

first station owned too many stations in a market, the second station would be counted as owned by the first. For example, under the FCC's new rule, if a station operator owned two stations in a given market and then entered into a JSA that allowed the operator to sell 100 percent of a third station's advertising time, then the station operator would be treated as owning three stations in the market and thus in violation of the FCC's general cap on owning more than two stations in the same market.

23. This rule was consistent with a growing concern at the FCC that divestitures being made by acquiring stations are "sham transactions." Most recently, the FCC ordered that a hearing be held with respect to Sinclair Broadcast Group, Inc.'s ("Sinclair") proposed acquisition of Tribune Media Company ("Tribune") because the divestitures proposed by Sinclair had characteristics of a sham: the stations in question were to be transferred pursuant to terms that were atypical of market, long-arm transactions and provided the seller the ability to exert influence over core operations of the sold stations after the transaction. *In re Applications of Tribune Media Company*, MB Docket 17-179, FCC 18-100, at ¶¶ 2, 21, 26 (July 18, 2018). The Commission concluded that these characteristics, taken together, warranted a hearing into whether the divestiture transactions were shams intended to circumvent the FCC's rules governing ownership of more than two stations in a given market through divesting to a closely-related entity that is effectively controlled by the seller following the transaction. *Id.* Sinclair and Tribune subsequently abandoned the transaction.

24. The attribution rule, which is consistent with the FCC's longstanding concern about sham transactions intended to circumvent the ownership restrictions, precluded Nexstar from bringing its overall acquisition of television stations from CCA, White Knight, and Grant

into compliance by divesting KPEJ, KMSS, and KLJB to Mission and executing JSAs and SSAs that effectively allowed Nexstar to control the divested stations.

25. Nexstar was thus forced to find a new way around the FCC's ownership limitations.

D. The Initial MBG/Nexstar Transaction.

26. Nexstar, determined to retain its control over KPEJ, KMSS, and KLJB, sought to alter the proposed transaction to make it more appealing to the FCC, in particular by selling the stations to a minority-owned entity.

27. As explained above, the media industry has been historically plagued by an absence of diversity among its ownership ranks. In hope of appealing to the Commission's interest in increasing minority ownership of television stations, in or about March 2014, Nexstar CEO Perry Sook and CFO Thomas Carter reached out through an intermediary to MBG's owner, Pluria Marshall.

28. Mr. Marshall is a longtime media executive and civic activist who has extensive experience in print, radio, and television station operations. Over the course of his decades-long career, Mr. Marshall has worked steadfastly to increase his ownership in various media outlets, particularly in television stations. He has often faced significant hurdles in obtaining the financing necessary to consummate such acquisitions. In the late 1980s and early 1990s, Mr. Marshall sought to acquire several television stations but was unable to obtain financing. Over this period, he made contact with no fewer than eight institutional lenders that commonly provide broadcast financing without success. In 2008, with nearly three decades of media experience, Mr. Marshall sought to acquire one or more television stations from Media General Corporation. Institutional lenders and private equity firms were unwilling to finance these acquisitions, citing Mr. Marshall's lack of sufficient independent assets.

29. To enable itself to leverage Mr. Marshall's minority status, Nexstar offered to assist him overcome the financing obstacles that stalled Mr. Marshall's previous efforts. Over the next few months, Nexstar's senior leadership met with Mr. Marshall to discuss and ultimately agreed to sell KPEJ, KMSS, and KLJB to Mr. Marshall. An essential and necessary part of this agreement was that Nexstar would help in obtaining the financing to purchase and operate the stations and would guarantee that financing for five years.

30. In addition to offering financial support for acquiring the stations, Nexstar offered to provide the technical knowhow and financial resources to produce new, minority-oriented programming. Nexstar promised Mr. Marshall, and later the FCC, that it would provide financial and technical assistance in the production of 40 hours per week of new, locally-produced news, sports, and public affairs programming, including the production of a minority-oriented public affairs program that Nexstar would syndicate.

31. In or about May 2014, Mr. Marshall formed MBG for the express purpose of acquiring these television stations from Nexstar.

32. Nexstar subsequently drafted agreements to facilitate MBG's acquisition of the three stations. The agreements drafted required MBG to assume Mission's role in the asset purchase agreement previously entered into between Nexstar and Mission.

33. As part of assuming Mission's asset purchase agreement, MBG agreed to pay \$27 million for KMSS and KPEJ. In June 2014, after executing the assignment agreement, Nexstar required that MBG agree to an amendment to the asset purchase agreement that raised the purchase price for KMSS and KPEJ from \$27 million to \$43.3 million, a \$16.3 million increase. Nexstar explained that this increase in value was the result of Nexstar providing MBG with additional assets it did not intend to provide Mission.

34. The list of assets Nexstar intended to transfer to Mission is not publicly available, so MBG has been unable to compare the assets Nexstar intended to transfer to Mission with the assets Nexstar transferred to MBG. Because MBG believed Nexstar was operating in good faith, MBG believed Nexstar's explanation for the increased purchase price and relied upon that representation when agreeing to that new purchase price.

35. Nexstar did not transfer to MBG additional assets valued at \$16.3 million that it did not intend to provide Mission.

36. The agreements drafted by Nexstar also included JSAs and SSAs that were identical to those proposed to be entered into between Nexstar and Mission. Specifically, under the JSAs initially provided by Nexstar to MBG and filed with the FCC, Nexstar would sell all of the advertising time for MBG's stations in return for a commission on those sales. Nexstar's hope was that MBG's minority-owned status would be enough to convince the FCC to waive the new rule related to JSAs involving the sale of more than 15 percent of a station's time.

37. Under the SSAs initially provided by Nexstar to MBG and filed with the FCC, Nexstar agreed to provide certain back-office services at MBG's stations for a combined \$185,000 monthly fee for the term of the SSAs.

38. In furtherance of Nexstar's objective to convince the FCC to waive the new rule related to JSAs involving the sale of more than 15 percent of a station's time, Nexstar and MBG met with FCC representatives on several occasions to lobby for approval of the contemplated transaction. Nexstar continued to convey to the FCC that approving the transaction would increase the number of minority-owned television stations consistent with the FCC's policy.

39. Central to Nexstar's message to the FCC was that approval of the transaction would allow a 100% minority-owned and controlled company to enter the television industry with ownership of three full-power, network-affiliated stations.

40. MBG also contacted influential public interest groups, including The National Association of Black Owned Broadcasters ("NABOB") and The Multicultural Media, Telecom, and Internet Council ("MMTC"), to solicit their support for the Nexstar-MBG transaction. Mr. Marshall also engaged, and met with, on several occasions, members of the Congressional Black Caucus, which in July 2014 issued a letter of support for the transaction.

41. The FCC, however, ultimately informed Nexstar that it would not approve the Nexstar-MBG agreement with the contemplated JSAs because the MBG stations would not be sufficiently independent.

E. To Obtain The FCC's Approval, Nexstar Modifies The Transaction.

42. In response to the FCC's insistence that the Nexstar-MBG transaction provide for MBG's independent ownership and operation of the stations in question, Nexstar amended the JSAs. To meet the new FCC rules, the JSAs limited the amount of commercial advertising time Nexstar could sell to 15 percent of the advertising time on the stations being sold to MBG. Nexstar and MBG, in a joint declaration, stated that other than this time "MBG will acquire the Stations' programming independently without the involvement of Nexstar."

43. The purpose of this amendment to the JSAs was to ensure that MBG could make independent programming decisions for all of the stations it was acquiring.

44. After the FCC's requirement that Nexstar and MBG amend the JSAs to limit the amount of commercial advertising time Nexstar could sell to 15 percent of the advertising time on the stations being sold to MBG, Nexstar required MBG to agree to an amendment to the SSAs to allow Nexstar to capture the revenue that the FCC had disallowed. After the amendment to

the SSAs, rather than paying a static \$185,000 monthly for the entire SSA term, MBG was required to pay \$535,500 per month to Nexstar for SSA fees, with 2.5% increases every year for the entire SSA term. Notably, Nexstar did not propose that it provide any additional services beyond those in the original SSAs.

45. With assurances that MBG would operate as an independent station owner, the FCC approved the transfer of the stations to MBG. In December 2014, FCC Chairman Tom Wheeler and Commissioner Mignon Clyburn specifically identified the transaction as indicative of progress in achieving the Commission's "often-stated, but elusive goal" of "[i]ncreasing minority ownership of television broadcast stations."

46. This approval, at minimum, was based on materially incomplete information. Nexstar did not disclose that the SSA fees were changed with the purpose of maintaining Nexstar's level of income from the originally proposed agreement. Specifically, Nexstar shifted the amounts it would have been entitled to as JSA fees, converting them into SSA fees so that—after the amendments—Nexstar was to receive a similar amount it would have received if the FCC had not rejected the Nexstar-MBG agreement as originally proposed. The financial terms were not materially different from the financial terms of the arrangement in which Nexstar would control MBG. Accordingly, Nexstar received the same amount of income from the agreements despite the fact that it would do 85 percent less of the work—selling only 15 percent, rather than 100 percent, of the commercial advertisement time.

F. Nexstar Sabotages MBG's Ability To Operate Its Stations.

47. Despite the assurances given that MBG would operate its stations independently, Nexstar has consistently interfered with MBG's operations. Nexstar's consistent interference, as well as various breaches of contract and tortious acts, have hamstrung MBG's operations. Nexstar structured the transaction in a manner that makes it impossible for MBG to operate

freely, regularly interferes with MBG's operations, and recently attempted to force MBG into a default on its credit facility.

1. Nexstar Set Commercial Terms At Rates That Undermine MBG's Business And Failed To Transfer Assets Promised To MBG.

48. As noted above, the transaction between MBG and Nexstar involved stations Nexstar was required to divest in connection with its broader acquisition of stations in various markets. The Nexstar-MBG transaction was almost entirely documented by Nexstar with no meaningful input from MBG, which was not allowed to negotiate but rather was given a take-it-or-leave-it contract of adhesion.

49. As a threshold matter, the fees due to Nexstar pursuant to the parties' SSAs were based on an attempt to circumvent the FCC's refusal to allow Nexstar to capture the revenue from selling all of the advertising time on MBG's stations. After the FCC required Nexstar to amend the JSAs, Nexstar increased the SSA fees to capture the revenue it would have garnered under the original, now-rejected JSAs.

50. This increase in SSA fees was not based on the fair-market value of the services Nexstar provided under the SSAs and was only designed to allow Nexstar to substantively disregard the FCC's rejection of the original JSAs.

51. Complicating matters, as noted above, the Nexstar-MBG transaction arose as a result of Nexstar's required divestiture in connection with a larger acquisition. Nexstar was acquiring a number of stations—including KLJB, KPEJ and KMSS, the stations at issue here—from Grant, White Knight, and CCA. Then, Nexstar was selling KLJB, KPEJ and KMSS to MBG. In consummating that subsequent transaction, however, MBG acquired only the stations' physical assets and their FCC licenses. Nexstar retained the stations' existing capital accounts, accounts receivable, and other streams of revenue and did not pass those to MBG. As a result,

MBG had no ability to meet the immediate cash flow demands required to operate its acquired stations. MBG was forced to immediately draw down on its existing line of credit. Additionally, and as a means of generating additional working capital, Nexstar proposed that MBG sell back to it one of the physical locations it had acquired in the deal. Nexstar previously contemplated this property sale as a further means of stripping away the assets granted to MBG.

52. Nexstar's intent is ultimately to re-take those stations it sold to MBG, with the expectation that in the current political climate Nexstar will face significantly less regulatory push-back than it did in late 2014.

2. Nexstar Interfered With MBG's Operation Of Its Stations.

53. Nexstar and MBG agreed that MBG would retain control of the stations it was acquiring. Each of the SSAs provides that "MBG shall maintain full control, supervision and direction of" the stations, including the stations' "management, programming, finances, editorial policies, personnel, facilities and compliance with the FCC Rules and Regulations."

54. Contrary to these provisions and the FCC's requirements, Nexstar has continuously interfered with MBG's ability to operate its stations independently from Nexstar's stations in the same locations.

55. For example, Nexstar has falsely communicated to the market—including potential advertisers—that Nexstar continues to own KLJB, KPEJ, and KMSS. Those communications have enabled it to take clients from MBG and prevented clients from pursuing advertising on MBG's stations. Additionally, across MBG's stations, Nexstar has:

- a. misrepresented the nature of the Nexstar-MBG relationship to MBG and Nexstar staff, viewers, clients, and others;
- b. interfered with MBG's programming and sales matters;
- c. reduced and/or eliminated critical on-air promotions, which inhibits MBG's ability to gain traction in its markets;

- d. refused to pay MBG sales staff advertising sales commissions to which they are entitled;
- e. moved MBG executives and staff to small, makeshift offices, making it impossible for MBG to operate its stations effectively; and
- f. refused to include MBG in critical discussions affecting MBG's operations, sales, and financing.

56. And even in those areas where the SSAs provide that Nexstar will assist MBG, it has failed to do so. For example, Nexstar has refused to meet its obligation under the SSAs to “maintain and repair (as needed) the transmission facilities” of MBG's stations.

57. Indeed, at each of the acquired stations, Nexstar employees have consistently interfered with MBG's operations.

58. MBG has repeatedly requested that Nexstar comply with its contractual obligations but Nexstar has refused. Nexstar's conduct has crippled MBG's ability to operate its stations and serve its viewers and clients.

59. Moreover, the new, minority-oriented programming central to Nexstar's proposal to the FCC never materialized. Despite promising that it would provide the financial and technical assistance to allow MBG to create such programming, Nexstar has withheld the promised assistance, blocking the creation of the diverse programming touted by Nexstar in its proposal to the FCC. Indeed, despite the fact that MBG independently produced the minority-oriented public affairs program Nexstar promised to syndicate, Nexstar never syndicated the program.

60. Nexstar's actions, including its failure to honor its agreements and representations, have been, and continue to be, part of a calculated plot by Nexstar to undermine the operations of MBG's acquired-stations so that, ultimately, MBG will no longer be able to continue to operate the stations.

61. As a result of Nexstar's actions, it enjoys effective control over KLJB, KPEJ, and KMSS.

3. Nexstar Has Withheld Retransmission Fees That Belong To MBG.

62. MBG, through its wholly owned television broadcast stations, transmits a digital broadcast television signal over-the-air to certain multichannel video programming distributors ("MVPDs"). In exchange for the right to broadcast MBG's programming, MVPDs pay a fee to MBG (the "Retransmission Fee").

63. Certain MVPDs paid their Retransmission Fees directly to Nexstar rather than paying those fees to MBG.

64. Since MBG acquired KLJB, KPEJ, and KMSS, Nexstar has wrongfully withheld portions of the Retransmission Fees certain MVPDs paid directly to Nexstar.

65. Nexstar is currently retaining millions of dollars of Retransmission Fees that rightfully belong to MBG.

66. On or about May 2, 2018, MBG requested that Nexstar turn over all of its Retransmission Fees. As of the date of this complaint, Nexstar has refused to turn over all of MBG's Retransmission Fees.

4. Nexstar Attempted To Force MBG To Default On Its Credit Obligations.

67. Nexstar's most recent interference with MBG's business relates to Nexstar's guarantee of MBG's financing. This financing was a crucial aspect of the transaction. When the Commission approved Nexstar's acquisitions and Nexstar's sale of three stations to MBG, the FCC specifically noted that the Nexstar-MBG transaction was remarkable in part because it enabled Mr. Marshall to overcome the "inability to obtain financing" through Nexstar's commitment to guarantee MBG's financing.

68. MBG's acquisition of the stations was financed via a syndicated credit facility in the principal aggregate amount of \$60 million.

69. The financing was initially provided through a December 1, 2014 Credit Agreement between MBG, as borrower; Bank of America, as administrative agent and collateral agent; and various lending institutions (the "December 1, 2014 Credit Agreement"). As part of the December 1, 2014 Credit Agreement, Nexstar guaranteed MBG's payment of the credit provided by the lenders to MBG in the December 1, 2014 Credit Agreement (the "December 2014 Guarantee Agreement") and committed that its guarantee would apply to any extension of the facilities such that the lenders need not even provide Nexstar notice or seek additional assurances.

70. Specifically, Section 2 of the December 2014 Guarantee Agreement states:

Each Guarantor agrees that the Guaranteed Obligations may be extended, renewed or otherwise modified, in whole or in part, without any notice to or further assent from it, and that such Guarantor will remain bound by this Guaranty notwithstanding any extension, renewal or other modification of any Guaranteed Obligation.

71. The December 2014 Guarantee Agreement, including the specific provision described herein, was entered into for the benefit of MBG. Nexstar provided the December 2014 Guarantee Agreement to fulfill its obligation to MBG and the FCC to provide financial assistance, and thereby provide MBG with a sufficient period of time to take over and operate the stations.

72. Without the December 2014 Guarantee Agreement, MBG would not have been able on its own to obtain the financing necessary to purchase the stations from Nexstar, and thereby allowed Nexstar to complete its separate \$500 million acquisition. The lenders, including Bank of America, required the December 2014 Guarantee Agreement as a condition to providing MBG the credit facilities. Indeed, the December 2014 Credit Agreement explicitly

states that Nexstar's guarantee is a "condition precedent" for the lenders to extend credit to MBG.

73. The facilities under the December 1, 2014 Credit Agreement were refinanced in January 2017. On January 17, 2017, a new credit agreement ("January 2017 Credit Agreement") was entered into by MBG, as the borrower; Bank of America, as administrative agent and collateral agent; and the lending institutions that provided credit through the syndicated credit facility.

74. When MBG's credit facilities were refinanced in January 2017, Nexstar reaffirmed its guarantee through a new guarantee agreement (the "January 2017 Guarantee Agreement"; collectively with the December 2014 Guarantee Agreement and as defined previously, the "Guarantee Agreements").

75. Like the original December 2014 Guarantee Agreement, the January 2017 Guarantee Agreement provides that Nexstar will automatically continue to guarantee the debts through any extension of the Credit Agreement facilities, and the lenders need not even provide Nexstar notice or seek additional assurances.

76. On July 19, 2017, the January 2017 Credit Agreement was amended to refinance the credit facilities (the "Amended Credit Agreement"; collectively with the December 1, 2014 Credit Agreement and the January 2017 Credit Agreement, the "Credit Agreements"). Section 2.15 of the Amended Credit Agreement permits the maturity date of the credit facility to be extended. Consistent with Nexstar's financing commitment, the maturity date "shall be no later than December 31, 2019." The amendment did not, however, change the maturity date for the facilities: June 28, 2018.

77. Nexstar set the terms of the agreements and amendments thereto. It has used the maturity date as leverage against MBG, contrary to its obligations to the FCC, MBG, and the Guarantee Agreements to which MBG is a third-party beneficiary.

78. This occurred in the spring and early summer of 2018. In March 2018, because MBG had not been involved in arranging the initial facilities, MBG began inquiring about the procedures for exercising its contractual prerogative to request an extension of the maturity date of its loans.

79. In May 2018, MBG formally requested an extension of the maturity date of its loan via written correspondence to the loan's administrative agent. If approved, the facilities would be extended to mature on December 1, 2019.

80. Some lenders in the syndicate agreed to the requested extension.

81. Other lenders, however, would agree to the extension if, and only if, Nexstar reaffirmed its guarantee of the credit facilities—i.e. reaffirm the five-year commitment to guarantee MBG's financing that Nexstar had made to get FCC approval of Nexstar's other acquisitions. Specifically, in June 2018, Wells Fargo, Bank of America, and the Royal Bank of Canada separately wrote to MBG explaining that they would extend the maturity date only if Nexstar reaffirmed its guarantee. Again, in the original transaction documents in 2014, Nexstar agreed to guarantee the debt for five years, agreed that the lenders did not have to seek Nexstar's reaffirmation during that five year period, and agreed it would reaffirm its commitment if the lenders did seek its reaffirmation.

82. Nexstar initially refused to reaffirm its existing commitment. In fact, it stated that it would not extend its guarantee obligation beyond the then-current maturity date of June 28, 2018. On May 30, 2018, it wrote to MBG, stating that "Nexstar is not willing to renew that

guarantee upon the maturity of the loans made to Marshall pursuant to the Credit Agreement.”

This affirmed its oral communication on March 21, 2018 that it would not extend its guarantee.

83. In June 2018, including specifically on June 20, 2018, MBG informed Nexstar that multiple lenders would provide MBG an extension of the maturity of their loans if Nexstar reaffirmed its guarantee. Nexstar still refused to provide that reaffirmation.

84. Nexstar encouraged the administrative agent and collateral agent of the Credit Agreements to abdicate its contractual rights and obligations. In June 2018, MBG informed Bank of America, the administrative agent and collateral agent of the Credit Agreements, that Nexstar was in violation of its commitment in the January 2017 Guarantee Agreement to guarantee any extension of the credit facilities and that lenders participating in the credit facilities had requested reaffirmation of Nexstar’s guarantee.

85. That same month, MBG requested that Bank of America exercise its right under Section 9.2 of the January 2017 Guarantee Agreement to obtain from Nexstar “any and all . . . assurances” requested by Bank of America as the collateral agent necessary to “confirm . . . the rights granted to the Secured Parties under” the agreement.

86. Bank of America refused to exercise its powers under Section 9.2 to request that Nexstar reaffirm its guarantee of any extension to the credit facilities’ maturity date.

87. Bank of America acted at the direction of Nexstar, which requested that Bank of America not agree to MBG’s request for an extension or aid in obtaining that extension in an effort to obtain commercial leverage in its attempt to purchase MBG’s stations at a discount.

88. Nexstar’s actions were in violation of the Amended Credit Agreement and the Guarantee Agreements.

89. Nexstar's refusal to provide its guarantee was part of its scheme to re-acquire the assets it sold to MBG. In written correspondence to MBG dated May 30, 2018, Nexstar CEO Perry Sook stated that "[i]f Marshall is unable to refinance or repay its obligations under the Credit Agreement when due, Nexstar will work diligently to minimize any loss to Nexstar as a result. In connection therewith, Nexstar will actively participate in any foreclosure sale over the equity interests in Marshall or the assets of Marshall . . . or if Nexstar is asked to perform under its guarantee by the Lenders, Nexstar . . . will take over the foreclosure efforts as successor-in-interest to the Lenders after paying off the Lenders."

90. Nexstar intended to use its leverage as a large client of Bank of America, among others, to force MBG's default and thus trigger Nexstar's guarantee obligations because, as consideration for the satisfaction of that obligation, Nexstar will receive the collateral held by the banks, namely MBG's assets in the form of the three acquired stations.

91. Nexstar abandoned this approach only after MBG threatened it with litigation. Once Nexstar provided its guarantee, the banks quickly agreed to an extension of the maturity date. The delay, however, caused harm to MBG's business.

92. Collectively, Nexstar's actions in furtherance of its scheme had the purpose and effect of hamstringing MBG's operations.

COUNTS

Count I: Breach of Contract

(Shared Services Agreements)

93. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

94. The SSAs executed between Nexstar and MBG are valid and enforceable contracts supported by mutual consideration.

95. Except where otherwise excused by Nexstar's conduct, MBG has performed its obligations under the SSAs.

96. The SSAs are continuous in nature, and Nexstar and MBG intended the SSAs to be continuous in nature.

97. Nexstar has breached its contractual obligations to MBG by: (i) refusing to devote sufficient resources to promote MBG's content on air; (ii) communicating to the marketplace that Nexstar owns and/or controls MBG's stations; (iii) attempting to steal or divert MBG's clients from MBG to Nexstar; (iv) failing to maintain an adequate broadcast signal for MBG programming; and (v) exerting and maintaining control over MBG's programming and sales matters.

98. As a direct and proximate result of the Nexstar's breach of the SSAs, MBG has suffered and continues to suffer injuries and damages.

Count II: Breach of Contract

(Guarantee Agreements)

99. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

100. The Guarantee Agreements executed between Nexstar and Bank of America are valid and enforceable contracts supported by mutual consideration.

101. The Guarantee Agreements were intended to benefit MBG, and MBG is a third-party beneficiary of the Guarantee Agreements executed between Nexstar and Bank of America.

102. The Guarantee Agreements are continuous in nature, and Nexstar and Bank of America intended the Guarantee Agreements to be continuous in nature.

103. Nexstar breached its contractual obligations to MBG when it refused to extend its guarantee of MBG's credit facility.

104. As a direct and proximate result of the Nexstar's breach of the Guarantee Agreements, MBG has suffered and continues to suffer injuries and damages.

Count III: Breach of the Implied Covenant of Good Faith and Fair Dealing

(Shared Services Agreements)

105. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

106. The SSAs executed between Nexstar and MBG are valid and enforceable contracts supported by mutual consideration.

107. Implied in the SSAs between MBG and Nexstar is a mutual covenant by which each contracting party agrees to act in good faith in the performance of its respective contractual duties.

108. Except where otherwise excused by Nexstar's conduct, MBG has performed its obligations under the SSAs.

109. The SSAs are continuous in nature, and Nexstar and MBG intended the SSAs to be continuous in nature.

110. By the conduct complained of hereinabove Nexstar has subverted MBG's right to receive the benefits of the SSAs and has, in fact, frustrated the purpose of the contracts.

111. As a direct and proximate result of the Nexstar's breach of the implied covenant of good faith and fair dealing, MBG has suffered and continues to suffer injuries and damages.

Count IV: Breach of the Implied Covenant of Good Faith and Fair Dealing**(Guarantee Agreements)**

112. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

113. The Guarantee Agreements executed between Nexstar and Bank of America are valid and enforceable contracts supported by mutual consideration.

114. The Guarantee Agreements were intended to benefit MBG, and MBG is a third-party beneficiary of the Guarantee Agreements executed between Nexstar and Bank of America.

115. Implied in the Guarantee Agreements is a mutual covenant by which each contracting party agrees to act in good faith in the performance of its respective contractual duties.

116. The Guarantee Agreements are continuous in nature, and Nexstar and Bank of America intended the Guarantee Agreements to be continuous in nature.

117. By the conduct complained of hereinabove Nexstar has subverted MBG's right to receive the benefits of the Guarantee Agreements and has, in fact, frustrated the purpose of the contracts.

118. As a direct and proximate result of the Nexstar's breach of the implied covenant of good faith and fair dealing, MBG has suffered and continues to suffer injuries and damages.

Count V: Intentional Interference with Contractual Relations

119. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

120. MBG enjoys or enjoyed valid contractual relationships with employees and clients.

121. MBG reasonably expected to maintain, or to continue to maintain, such contractual relationships and to derive economic advantages from them in the future.

122. Nexstar at all times knew or should have known of MBG's contractual relationships with employees and clients and intended to interfere with them.

123. By reason of the matters herein alleged, Nexstar has, without any business justification and by use of improper means, intentionally and maliciously induced the breach and disruption of MBG's contractual relationships, including those with its employees and clients.

124. Nexstar's improper means of interfering with MBG's contractual relationships include falsely representing to the marketplace, including to MBG's clients, that Nexstar, and not MBG, owned and controlled the stations acquired by MBG, and by disparaging MBG and its executives to MBG's stations' employees.

125. By reason of Nexstar's intentional interference, MBG has suffered and continues to suffer injuries and damages.

126. By reason of the egregious nature of Nexstar's intentional interference, MBG is further entitled to an award of punitive damages in an amount to be fixed at trial.

Count VI: Tortious Interference with Economic Relations

127. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

128. MBG enjoys or enjoyed economic relationships with employees, clients, and potential clients.

129. MBG reasonably expected to maintain, or to continue to maintain, such economic relationships and to derive economic advantages from them in the future.

130. Nexstar at all times knew or should have known of MBG's economic relationships with employees, clients, and potential clients and intended to interfere with them.

131. By reason of the matters herein alleged, Nexstar has, without any business justification and by use of improper means, intentionally and maliciously interfered with MBG's economic relationships, including those with its employees, clients, and potential clients.

132. Nexstar's improper means include falsely representing to the marketplace, including to MBG's clients and potential clients, that Nexstar, and not MBG, owned and controlled the stations acquired by MBG, and by disparaging MBG and its executives to MBG's stations' employees.

133. Nexstar's tortious interference has caused the actual disruption of economic relationships with MBG's employees, clients, and potential clients.

134. By reason of Nexstar's tortious interference, MBG has suffered and continues to suffer injuries and damages.

135. By reason of the egregious nature of Nexstar's tortious interference, MBG is further entitled to an award of punitive damages in an amount to be fixed at trial.

Count VII: Conversion

136. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

137. As alleged herein, MBG through its wholly owned television broadcast stations, transmits a digital broadcast television signal over-the-air to certain MVPDs. In exchange for the right to broadcast MBG's programming, MVPDs pay Retransmission Fees to MBG.

138. Certain MVPDs tender their Retransmission Fees directly to Nexstar rather than paying those fees to MBG.

139. At all times mentioned herein, MBG was and is entitled to the full and complete possession of its Retransmission Fees, which Nexstar is wrongfully withholding.

140. Nexstar is currently retaining millions of dollars of Retransmission Fees that rightfully belong to MBG.

141. On or about May 2, 2018, MBG requested that Nexstar turn over all of its Retransmission Fees. As of the date of this complaint, Nexstar has refused to turn over all of MBG's Retransmission Fees.

142. As a result of Nexstar wrongfully withholding the Retransmission Fees due to MBG, MBG has been damaged in an amount according to proof.

143. By reason of the egregious nature of Nexstar's unlawful conduct, MBG is further entitled to an award of punitive damages in an amount to be fixed at trial.

Count VIII: Accounting

144. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

145. In addition to the Retransmission Fees referenced herein, Nexstar currently owes MBG various monies.

146. As a result of Nexstar's actions and concealment of facts from MBG, MBG is unable to ascertain a fixed sum due to the complexity of the various accounts as between MBG and Nexstar.

147. Therefore, MBG requests that Nexstar be ordered to provide an accounting of all sums due and owing MBG from Nexstar.

Count IX: Fraudulent Misrepresentation

148. MBG repeats and realleges the foregoing paragraphs as though fully set forth herein.

149. Nexstar misrepresented the terms of the MBG's acquisition of the stations when it increased the purchase price for KMSS and KPEJ from \$27 million to \$43.3 million, a \$16.3 million increase. Specifically, Nexstar told MBG that the increase in purchase price was based on Nexstar transferring additional assets to MBG that it did not intend to transfer to Mission.

150. Nexstar did not transfer to MBG additional assets valued at \$16.3 million that it did not intend to provide Mission.

151. Nexstar knew that the increase in purchase price for KMSS and KPEJ was not based on Nexstar transferring additional assets to MBG that it did not intend to transfer to Mission.

152. Nexstar intended for MBG to rely on its misrepresentation to agree to the increased purchase price for KMSS and KPEJ.

153. The list of assets Nexstar intended to transfer to Mission is not publicly available, so MBG was unable to compare the assets Nexstar intended to transfer to Mission with the assets Nexstar transferred to MBG. Because MBG believed Nexstar was operating in good faith, MBG actually and justifiably relied upon Nexstar's misrepresentation as the basis for increasing the purchase price for KMSS and KPEJ.

154. As a result of its reliance upon Nexstar's misrepresentation, MBG has suffered damages and injuries through its overpayment for the stations it acquired.

PRAYER FOR RELIEF

WHEREFORE, MBG prays for the following relief:

1. Grant judgment in favor of MBG and against Nexstar;
2. Declare that Nexstar's conduct constitutes violations of the common law cited herein;
3. Grant all appropriate injunctive relief;
4. Award MBG an appropriate amount in monetary damages as determined at trial, including pre- and post-judgment interest;
5. Award punitive damages sufficient to punish Nexstar for the acts complained of herein and to deter such future conduct;
6. Award MBG attorneys' fees and the costs of bringing this action; and
7. Grant MBG such other relief as is just and appropriate.

JURY DEMANDED

MBG hereby demands a trial by jury.

Dated: April 3, 2019

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